

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

GUY PRESTON HALE, JR.

Movant

v.

CIVIL ACTION NO. 2:04-01037
(Criminal No. 2:02-00172-1)

UNITED STATES OF AMERICA,

Respondent

MEMORANDUM OPINION AND ORDER

Pending is movant's motion pursuant to 28 U.S.C. § 2255, filed September 23, 2004, seeking the vacatur, set aside, or correction of his September 9, 2003, sentence of 147 months imprisonment imposed following his guilty plea to (1) possession with intent to distribute cocaine base, in violation of 21 U.S.C. § 841(a)(1) and (2) using and carrying firearms in relation to a drug trafficking crime, in violation of 18 U.S.C. § 924(c). No direct appeal was filed.

Pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) the court received the proposed findings and recommendation of the United States Magistrate Judge, filed on September 7, 2005. Movant filed objections to the proposed findings and

recommendation on September 20, 2005.

In his objections, movant contends he was sentenced in violation of the principles articulated by the United States Supreme Court in Blakely v. Washington, 542 U.S. 296 (2004) and United States v. Booker, 125 S.Ct. 738 (2005). Movant further asserts that he is entitled to an evidentiary hearing to argue the applicability of these two cases.

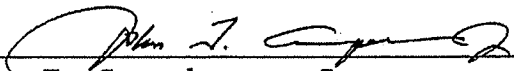
Shortly after the September 20, 2005, filing of his objections, the United States Court of Appeals for the Fourth Circuit held that neither Blakely nor Booker is available for post-conviction relief sought by federal prisoners whose convictions became final before the decisions in those two cases. See United States v. Morris, 429 F.3d 65, 72 (4th Cir. 2005). It is undisputed movant's conviction became final prior to the United States Supreme Court's decisions in both Blakely and Booker, and, thus, these cases are of no assistance to movant in his collateral challenge. Inasmuch as it is clear from the pleadings and record that movant is not entitled to relief with respect to his Booker/Blakely claims, an evidentiary hearing is not necessary. See 28 U.S.C. § 2255; Raines v. United States, 423 F.2d 526 (4th Cir. 1970).

Based upon the foregoing discussion and the proposed findings and recommendation of the magistrate judge, which are hereby adopted and incorporated herein, the court concludes that movant's section 2255 motion should be denied.

It is, accordingly, ORDERED that the movant's motion pursuant to 28 U.S.C. § 2255 be, and it hereby is, denied. It is further ORDERED that this action be, and it hereby is, dismissed and stricken from the docket.

The Clerk is directed to forward copies of this written opinion and order to the movant, all counsel of record, and the United States Magistrate Judge.

DATED: June 26, 2006



John T. Copenhaver, Jr.
United States District Judge